

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1285-02
Bill No.: Perfected HCS for HB 388
Subject: Insurance - General; Insurance Dept.
Type: Original
Date: April 6, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 5 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration (COA) - Deputy Commissioner's Office, COA - Administration Hearing Commission, Department of Insurance and Office of State Courts Administrator** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Office of Prosecution Services (OPS)** state the proposal will not have a significant direct fiscal impact on county prosecutors. However, at the present time, OPS is unable to determine whether prosecutors would incur any costs associated with receiving records.

Officials from the **Office of Attorney General (AGO)** state the proposal will create additional costs related to obtaining documents in civil or criminal cases where "audit privileged" documents are at issue. Because the proposal provides for new responsibilities for requesting audit privileged documents and for additional in-camera review procedures, the AGO assumes the costs of this proposal are unknown, but will not exceed \$100,000.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
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GENERAL REVENUE

Costs - Office of Attorney General

Additional document procurement costs	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
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ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This proposal makes certain documents that are submitted to the Department of Insurance non-public documents, including information in consumer complaint files and information submitted by an insurer or producer for purposes of investigation. This information is confidential and not subject to disclosure unless a subpoena issued by the proper prosecuting attorney, Attorney General, administrative hearing officer, or court. The department director can make these documents public if admitted as evidence in any administrative, civil, or criminal enforcement proceeding.

Any information collected in the course of an insurance compliance audit is considered privileged. The information is not discoverable or admissible as evidence in any legal action, unless the insurer expressly waives the privilege. Persons preparing the audit documents will not be examined in civil, criminal, or administrative hearings unless the documents are not privileged.

In a civil, administrative, or criminal proceeding, a court may order disclosure of materials, after in-camera review, if it is determined that the privilege was asserted for fraudulent purposes or that the privilege does not apply. In any administrative or civil proceeding initiated by the

DESCRIPTION (continued)

director, the administrative hearing officer or court may, after an in-camera review, require public disclosure of material if certain requirements are met.

After conducting an in-camera review of the insurance compliance audit document, the court may require disclosure of any portion of the document it determines is not privileged. Any compelled disclosure of an audit will not make the audit a public document or be deemed a waiver of the privilege for any other civil, criminal, or administrative proceeding.

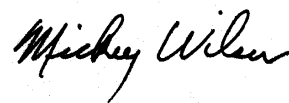
An insurer has the burden of demonstrating the applicability of the privilege. The privilege will not apply to information: (1) Expressly required to be collected, maintained, or reported to regulatory agencies pursuant to law; (2) Obtained by observation or monitoring by any regulatory agency; or (3) Obtained from a source independent of the insurance compliance audit.

The insurance compliance self-evaluative privilege created in these sections will apply to all litigation or administrative proceedings initiated after the effective date of the proposal.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Office of Administration -
 Deputy Commissioner's Office
 Administrative Hearing Commission
Office of State Courts Administrator
Department of Insurance
Office of Prosecution Services



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